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8                   UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE  
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10                   TONY D. PENWELL,

11                   Plaintiff,

12                   v.

13                   REED HOLTGEERTS, *et al.*,

14                   Defendants.

CASE NO. C05-2106 TSZ-MAT

ORDER REQUESTING  
SUPPLEMENTAL BRIEFING,  
GRANTING PLAINTIFF'S MOTION  
FOR ADDITIONAL DISCOVERY,  
AND RENOTING RENEWED  
MOTION FOR SUMMARY  
JUDGMENT

15  
16                   After plaintiff Tony Penwell was appointed counsel, defendants renewed their motion for  
summary judgment. (Dkt. 145; *see* Dkt. 81.) In opposition, Mr. Penwell moved under Federal  
18 Rule 56(d) for additional time to depose two declarants, to submit additional information, and  
presumably to submit a supplemental affidavit highlighting genuine questions of material fact.  
20 (Dkt. 150, at 18–19.) The Court finds that the parties have yet to address certain issues and  
authorities, particularly while Mr. Penwell has had representation, and that further development  
22 of the record would assist in resolving defendants' dispositive motion. The Court therefore

23 **ORDERS:**

24 ORDER REQUESTING SUPPLEMENTAL  
BRIEFING, GRANTING PLAINTIFF'S MOTION  
FOR ADDITIONAL DISCOVERY, AND  
RENOTING RENEWED MOTION FOR  
SUMMARY JUDGMENT - 1

- 1       1. The parties are **DIRECTED** to provide supplemental briefing on the following  
2           issues:
- 3           a. In *Greene v. Solano County Jail*, 513 F.3d 982, 983 (9th Cir. 2008), the  
4           Ninth Circuit concluded that in contradiction to RLUIPA's plain language  
5           "the Claybank Jail's policy of prohibiting Greene, a maximum security  
6           prisoner, from attending group religious worship services substantially  
7           burdened his ability to exercise his religion." Although this Court  
8           specifically cited *Greene* in an earlier Report and Recommendation, the  
9           parties forego any discussion of *Greene*. The parties must provide an  
10          explanation for why *Greene* does or does not apply to Mr. Penwell's  
11          allegations.
- 12       b. The parties should address the question of **qualified immunity**—both as  
13           to the First Amendment claim and the RLUIPA claim—and discuss the  
14           impact of *Cutter v. Wilkinson*, 544 U.S. 709, 720–21 & n.10 (2005),  
15           *Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008), and *Greene v.*  
16           *Solano County Jail*, 513 F.3d 982, 983 (9th Cir. 2008).
- 17       c. The parties should also address the questions of **personal involvement**  
18           and lack of **respondeat superior** liability.
- 19       2. Mr. Penwell's Rule 56(d) motion to take the depositions of **Lynell Sellers** and  
20           **Merv Weidner** is **GRANTED**. The differing accounts of those declarants and of  
21           Mr. Penwell and other inmates may assist resolution of the pending summary  
22           judgment motion.

23  
24 ORDER REQUESTING SUPPLEMENTAL  
BRIEFING, GRANTING PLAINTIFF'S MOTION  
FOR ADDITIONAL DISCOVERY, AND  
RENOTING RENEWED MOTION FOR  
SUMMARY JUDGMENT - 2

3. Defendants' renewed motion for summary judgment (**Dkt. 145**) is **RENOTED** for consideration on **October 12, 2012**.

- a. The parties' supplemental papers, including any exhibits, declarations and affidavits, are due by **October 1, 2012**.
- b. The parties' responses are due by **October 12, 2012**.

4. The Clerk is **DIRECTED** to provide a copy of this Order to the Honorable Thomas S. Zilly.

Dated this 31st day of July, 2012.

Mary Alice Theiler  
Mary Alice Theiler  
United States Magistrate Judge